In the High Court of Judicature at Madras

Dated: 15.02.2005

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Second Appeal No. 1065 of 1994

Neelavathi ..Appellant/Plaintiff

..vs..

1. Shanmugam
2. Arulmigu Ramapiran Koil
   at Senthamangalam rep.
   by its Trustee Inbasekaran ..Respondents/Defendants

Senthamangalam Village,
Via. Sunguvarchathram
Sriperumbudur Taluk.

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 18.02.1994 in A.S.No.26 of 1993 on the file of Sub Court, Kancheepuram, reversing the judgment and decree dated 25.09.1992 in O.S.No.657 of 1986 on the file of Principal District Munsif Court, Kancheepuram.

For Appellant : Mr.D.Durairaj
For Respondents : Mr.R.Rajesh for
Mr.S.Balasubramanian

JUDGMENT

This Second Appeal is directed against the decree and judgment of the Sub Court, Kancheepuram, dated 18.02.1994 in A.S.No.26 of 1993, which reversed the decree and judgment passed by the District Munsif Court, Kancheepuram, on 25.09.1992 in O.S.657 of 1986.

2. While admitting the Second Appeal, the following substantial question of law was framed:

> "Whether the learned Subordinate Judge erred in law in construing the plea of adverse possession as inconsistent with plea of title under Ex.A1 failing to note that the plaintiff had merely set out alternative source of title which is not

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prohibited by law ?

3. This is a suit for declaration and injunction. The appellant is the plaintiff. The subject matter of suit is 0.32 cents in survey No.94/3-B of Papankuzhi Village of Kancheepuram Taluk, patta number of which is 239. The plaintiff relied upon a settlement deed dated 25.07.1966, marked as Ex.A-1, whereby the property was gifted to plaintiff by her father Nagappan. In the said document, Nagappan had mentioned two factors; one is that, that property belonged to him by his purchase and the other is that he had earlier executed a Gift deed in favour of his wife on 09.03.1951 and that Alamelu, the wife subsequently died. Unfortunately, no particulars of the sale in favour of Nagappan were mentioned thereunder nor was found in the course of evidence. Apart from the gift deed, the other documents that were filed are kist receipts through Exs.A-2 to A-5 and yet another sale deed dated 26.11.1982 through Ex.A-8 in favour of one Inbasekaran, which refers to the property lying on the west of suit property. There were three witnesses examined including the plaintiff on her side and one witness examined on the side of the defendants.

4. The 1st defendant claimed cultivating tenancy right under the 2nd defendant temple, in whose written statement, it was denied that the suit property never belonged to Nagappan nor did he have any competency or capacity to execute a gift in favour of plaintiff. It was further contended that neither the plaintiff nor her alleged predecessor was in possession and enjoyment of the same. On the contrary, the suit property was pleaded as belonging to 2nd defendant temple inasmuch as one Kanniappa Naicker had purchased it in the capacity of the trustee of the said temple as early as on 27.09.1934 under Ex.B-1.

5. A careful perusal of that document through Ex.B-1 would show that what Kanniappan purchased thereunder was 34 cents in Survey No.94/3. Since it was purchased by Kanniappan not in his individual capacity but in the capacity of the trustee of the 2nd defendant temple, the title vested with the temple as early as in 1934. The 2nd defendant temple had also produced the copy of chitta through Exs.B-12 and B-13 and the copy of patta through Ex.B-14. Leaving Ex.B-2 patta as it had corrections in the survey number, we may have to rely upon Exs.B-12 to B-14, the chitta and patta for the suit survey number. It has been argued by the counsel for the appellant that they were dated 12.09.1992 and 14.09.1992, whereas decree was passed in the trial court on 25.09.1992. It is in that way documents pertained to the period subsequent to the suit.

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But later developments and events subsequent to suit may also have to be taken into consideration. While plaintiff has no document of patta nor chitta, the 2nd defendant was able to file them under Exs.B-12 to B-14. This will go to show their possession.

6. Since Ex.A-1 is of the year 1966 and no document was produced to show that Nagappan, the plaintiff's father gifted it to his wife on 09.03.1951 and since no document of purchase in favour of Nagappan in regard to this property was produced and that the same was not mentioned in Ex.A-1 and also since Ex.B-1 is 32 years older than Ex.A-1 document, it was correctly found by the learned Sub Judge that the appellant / plaintiff has not established her title.

7. Again, when plaintiff had relied upon a particular document of title, namely, Ex.A-1 gift deed, in order to claim right and title to suit property, she cannot claim it by adverse possession, because when once she claims title upon a particular document, then whatever right plaintiff claims would be flowing if at all under that document, in which case there is no element of adverse nature of possession in order to make out a case of prescription by title. Thus, the substantial question of law is answered against the appellant/plaintiff and I find no reason to allow this second appeal.

8. The Second Appeal is dismissed and decree and judgment passed by the first appellate court is confirmed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1) The Subordinate Judge,
   Kancheepuram.

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2) The Principal District Munsif,
Kancheepuram.

3)The Record Keeper,
V.R.Section,
High Court,Madras.

+1cc to Mr.P.Yashod Vardhan Advocate Sr 6653

GM (CO)
km/8.3.

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